STADCO SDN BHD v. CHERATING DEVELOPMENT SDN BHD & ANOR

HIGH COURT MALAYA, KUALA LUMPUR
AZIZUL AZMI ADNAN JC
[CIVIL SUIT NO: S6-22-206-2002]
27 MARCH 2015

CONTRACT: *Sale and purchase of property – Failure to complete – Plaintiff claimed against second defendant pursuant to sale purchase agreements entered into with first defendant for completed properties – Whether plaintiff had made full payment for purchase of said properties – Whether said agreements were sham agreements – Whether second defendant bound by terms of said agreements – Whether common law rule in contract that a person may not take benefit of contract without being bound by its burdens applied to second defendant – Whether there was any conspiracy between first and second defendants to defraud plaintiff – Whether properties held on trust by second defendant for benefit of plaintiff – Evidence Act 1950, s. 92(b) – Specific Relief Act 1950, ss. 23(a), (c), 26(b)*

The plaintiff had entered into sale and purchase agreements ('SPAs') with the first defendant ('Cherating') to acquire properties in a development in Butterworth ('the properties'). Unfortunately, the development was abandoned by Cherating. Subsequently, the second defendant ('Woolley') took over the project from Cherating *vide* a land transfer agreement ('LTA') in order to rehabilitate and complete the project. However upon completion, the properties that the plaintiff purchased were never delivered to it. The plaintiff then commenced this action against the defendants in 2002, obtaining judgment in 2004. However, the judgment against Woolley was set aside by the Court of Appeal in 2010, which remitted the case to this court for full trial. Here, the plaintiff sought relief against Woolley on the basis that: Woolley was bound by the terms of the SPAs that the plaintiff had entered into with Cherating; Woolley and Cherating had conspired to defraud the plaintiff; and Woolley held the properties as a constructive trustee for the benefit of the plaintiff. Woolley on the other hand, contested the reliefs sought by the plaintiff and argued, *inter alia*, that the evidence of the offer for discount and the evidence relating to the payment of the purchase price by the plaintiff to Cherating should be excluded pursuant to ss. 91 and 92 of the Evidence Act 1950 ('EA'); the SPAs were sham agreements; as Woolley did not purchase the subject land from Cherating, it was not claiming under Cherating by a title arising subsequent to the SPAs; and s. 23(a) and (c) of the Specific Relief Act 1950 ('SRA') barred the plaintiff from the relief that it sought. Hence, the main issues for determination were, *inter alia*, (i) whether payment had in fact been made by the plaintiff to Cherating; (ii) whether the SPAs were sham agreements; (iii) whether Woolley was bound by the terms of the SPAs by virtue of s. 26(b) of the SRA; (iv) whether Woolley was bound by the terms of the

SPAs pursuant to cl. 41 of the SPAs and/or under the common law rule in contract that a person may not take the benefit of a contract without being bound by its burdens; (v) whether there was conspiracy between Woolley and Cherating to defraud the plaintiff; and (vi) whether the properties were held on trust by Woolley as a constructive trustee for the benefit of the plaintiff.

Held (allowing plaintiff's claims):

(1) At trial, the plaintiff adduced the original cheques that had been used to make payment to Cherating, together with the various endorsements that indicated that the cheques had been processed for payment. In as far as the offer for discount is concerned, the existence of a discount was not inconsistent with the terms of the SPAs, and was admissible pursuant to proviso (b) of s. 92 of the EA. Further, upon observation of the demeanour of the director of the plaintiff, Tan, there was no reason to doubt his testimony. (paras 17, 20 & 21)

(2) The proposition that the SPAs were sham agreements was not supported by the evidence. While it was unusual for the purchase price to be paid in full prior to the completion of a property and for part of the payment to be made even before execution of formal documentation, the evidence of Tan was corroborated by contemporaneous documentary evidence and independent testimony to show that payment had indeed been made to and received by Cherating. The discount arrangement was not documented in writing, but this did not make the SPAs sham documents, as it could not be said that there was some ulterior purpose that was disguised within the express words of the SPAs. Accordingly, having heard and evaluated the *viva voce* evidence, the plaintiff had paid in full the purchase price under the SPAs to Cherating. (paras 24 & 37)

(3) Woolley's own pleaded case stated that it had acquired the whole of the beneficial title to the disputed lands. In addition, the LTA was on its true construction an agreement which intended to transfer the legal and beneficial title to the subject lands to Woolley, in consideration of the mutual undertakings contained in the LTA, which included the best endeavours clause to attain the object of rehabilitating the development project, amongst others. This construction was supported by the fact that the LTA required the duly executed transfer forms to be deposited with Woolley, which based on the evidence received at trial had been complied with. In other words, the LTA was a sale and purchase agreement in all but name. (para 48)

(4) The fact that legal title to the properties did not lie with Woolley was immaterial. If, pursuant to s. 26(b) of the SRA, a prior agreement could defeat the title of a subsequent purchaser who had been registered as the proprietor of the land (*Tan Sin Thew lwn. Rintas Sdn Bhd & Satu Lagi*),

then a *fortiori* it must be capable of defeating the beneficial title of a subsequent purchaser. The fact that Woolley claimed in contract and not as a registered proprietor of the disputed lands did not in any way weaken the plaintiff's case against it. (para 49)

(5) In the instant case, if s. 23(a) of the SRA was read to mean that s. 26(b) of the SRA would only apply if there was privity, this would vitiate the entire purpose of s. 26(b). Such a construction would be contrary to logic. Further, no equities had arisen in favour of Woolley in this instance to disentitle the plaintiff from obtaining relief and s. 23(c) of the SRA did not bar the plaintiff from seeking relief for specific performance, as the plaintiff could not be said to have obtained satisfaction for the breach of contract. Here, as Woolley was a person who was claiming under Cherating by a title arising subsequent to the SPAs, the SPAs could be specifically enforced against Woolley by virtue of s. 26(b) of the SRA. (paras 53 & 54)

(6) Clause 41 in the SPAs was not effective to impose upon Woolley obligations contained in the SPAs, for the simple reason that Woolley was not a party to the SPAs. The effect of cl. 41 was to impose upon the parties to the SPAs an obligation to ensure that, in the event that any of the rights under the SPA was assigned to any third party, the assignor was contractually obligated to ensure that the assignee undertook to comply with the obligations of the assignor under the SPAs. Where the assignor failed to do so, the other party may terminate the SPA in question, or specifically enforce it, requiring the assignor to procure that the assignee adheres to the terms of the SPA. To hold otherwise would be to militate against the fundamental principle of privity of contract. (paras 59, 60 & 61)

(7) At the time Woolley entered into the LTA with Cherating, it knew of the fact that the plaintiff had lodged a private caveat over the master titles for the properties. Hence, the knowledge of the contents of the caveat lodgement form was imputed to Woolley, on the basis that Woolley or, at the very least, its solicitors, had obtained a copy of the form. Accordingly, not only did Woolley know about the plaintiff's interest by virtue of the caveat, it also knew that the plaintiff had fully paid to Cherating the purchase price for the subject properties. Following that, as a matter of fact a benefit under the SPAs had accrued to Woolley, even though there was no transfer of the purchase price under the SPAs from Cherating to Woolley. Having obtained the benefit of the SPAs, Woolley could not now argue that it was not subject to their burdens. (paras 78, 80 & 83)

(8) The plaintiff did not prove its case against Woolley for conspiracy to defraud beyond reasonable doubt. Even though Woolley had known of the existence and nature of the plaintiff's caveat, the court was not

satisfied that the omission of the plaintiff's name was done with the connivance of representatives of Woolley. Indeed, there was in fact no evidence to suggest that such was the case. (para 107)

(9) Although title to the lands that were the subject matter of the LTA remained with Cherating, Woolley was effectively the owner of the lands, due to the fact that the LTA created an obligation on Cherating to convey the lands to Woolley; Cherating had already executed the relevant memoranda of transfer in favour of Woolley; and an irrevocable power of attorney had been granted to Woolley by Cherating giving it the power to deal in the land. Furthermore, Woolley has also claimed in its defence that it is the beneficial owner of the lands. (paras 111 & 112)

(10) Woolley not only knew about the existence of the plaintiff's caveat prior to signing the LTA with Cherating, but also that the plaintiff had paid the purchase price under the SPAs in full to Cherating. That state of mind was sufficient to justify the intervention of the principles of equity as it would be unconscionable for Woolley to claim, to the exclusion of the plaintiff, that it was the beneficial owner of the properties that were the subject of the SPAs. Therefore, the plaintiff was the beneficial owner of the properties it had purchased pursuant to the SPAs and Woolley held all and any rights, title and interest in the properties for the benefit of the plaintiff. (paras 113 & 114)

Case(s) referred to:

Aik Ming (M) Sdn Bhd & Ors v. Chang Ching Chuen & Ors & Another Case [1995] 3 CLJ 639 CA ***(refd)***

Bhup Narain Singh v. Gokhul Chand Mahton LR 61 IA 115 PC ***(refd)***

Chan Soo Lee v. Cherating Development Sdn Bhd & Woolley Development Sdn Bhd (Civil Suit No. 22-224-2002) (unreported) ***(refd)***

Davies v. Jones [2009] EWCA Civ 1164 CA ***(refd)***

Golden Vale Golf Range & Country Club Sdn Bhd v. Hong Huat Enterprises Sdn Bhd [2008] 6 CLJ 31 CA ***(refd)***

Halsall v. Brizell [1957] 2 WLR 123 ***(refd)***

Jhandoo v. Ramesh Chandra AIR (58) 1971 Allahabad 189 ***(refd)***

Kean Yick Enterprise Sdn Bhd v. Cherating Development Sdn Bhd & Anor And Other Cases [2012] 3 CLJ 741 HC ***(refd)***

Lau Kim Piaw v. Cherating Development Sdn Bhd & Woolley Development Sdn Bhd (Civil Suit No. S22-1207-2006) (unreported) ***(refd)***

Law Debenture Trust Corporation v. Ural Caspian Oil Corporation Ltd [1993] 1 WLR 138 ***(refd)***

Mahadeo Keshav Lingarkar v. Shamrao Balwant Kesarker AIR 1972 Bom 100 ***(refd)***

Mohammad Aslam Khan v. Feroze Shah AIR 1932 PC 228 ***(refd)***

Ong Chat Pang & Anor v. Valliappa Chettiar [1971] 1 LNS 96 FC ***(refd)***

Pamaron Holdings Sdn Bhd v. Ganda Holdings Bhd [1988] 1 LNS 109 HC ***(refd)***

Paragon Finance plc v. DB Thakerar & Co [1999] 1 All ER 400 ***(refd)***

Pekan Nenas Industries Sdn Bhd v. Chang Ching Chuen & Ors [1998] 1 CLJ 793 FC ***(refd)***

Rhone v. Stephens [1994] 2 AC 310 ***(refd)***
Simmah Timber Industries Sdn Bhd v. David Low See Keat & 2 Ors [1999] 1 LNS 14 HC ***(refd)***
Takako Sakao v. Ng Pek Yuen & Anor [2010] 1 CLJ 381 FC ***(refd)***
Tan Sin Thew lwn. Rintas Sdn Bhd & Satu Lagi [1994] 4 CLJ 331 HC ***(refd)***
Tindok Besar Estate Sdn Bhd v. Tinjar Co [1979] 1 LNS 119 FC ***(refd)***
Tito v. Waddell No 2 [1977] Ch 106 ***(refd)***
Trans Elite Equipment Rental Sdn Bhd v. PSC-Naval Dockyard Sdn Bhd [2003] 4 CLJ 270 HC ***(refd)***
Woolley Development Sdn Bhd v. Mikien Sdn Bhd [2008] 2 CLJ 303 CA ***(refd)***
Woolley Development Sdn Bhd v. Stadco Sdn Bhd [2010] 7 CLJ 73 CA ***(refd)***
Woolley Development Sdn Bhd v. Stadco Sdn Bhd (No 2) [2010] 7 CLJ 83 CA ***(refd)***
Zaharah A Kadir v. Ramunia Bauxite Pte Ltd & Anor [2011] 1 LNS 1015 CA ***(refd)***

Legislation referred to:
Evidence Act 1950, ss. 91, 92, 103, 106
Specific Relief Act 1950, ss. 23(a), (c), 26(b)

Specific Relief Act 1877 [Ind], ss. 19, 27(b)

Other source(s) referred to:
Sarkar's Law of Evidence, 15 edn, p 1689

For the plaintiff - Su Tiang Joo (Pang Kong Leng & Shelby Chin with him); M/s Shafee & Co
For the 2nd defendant - Prakash Lachimanan (Malarvily Perumal with him); M/s Mathews Hun Lachimanan

Reported by S Thara

JUDGMENT

Azizul Azmi Adnan JC:

Introduction

[1] In 1997, Stadco Sdn Bhd, the plaintiff in this case, entered into sale and purchase agreements with the first defendant Cherating Development Sdn Bhd (Cherating), to acquire properties in a development in Butterworth then known as the Raja Uda Commercial Centre. Unfortunately, the East Asian financial crisis erupted shortly after, causing the development to be abandoned by Cherating. The second defendant Woolley Development Sdn Bhd (Woolley), took over the project in or around 2000 and completed the project, renaming it Woolley Avenue.

[2] The properties that the plaintiff purchased were never delivered to it. The plaintiff commenced this action against the defendants in 2002, obtaining judgment in 2004. However, the judgment against Woolley was set aside by the Court of Appeal in 2010[1], which remitted the case to this court for full trial. The 2004 judgment against Cherating remains.

[3] The plaintiff sought relief against Woolley on the basis that:

(a) Woolley was bound by the terms of the sale and purchase agreements that the plaintiff had entered into with Cherating;

(b) Woolley and Cherating had conspired to defraud the plaintiff; and

(c) Woolley holds the properties that were the subject matter of the sale and purchase agreements as a constructive trustee for the benefit of the plaintiff.

Salient Facts

[4] Cherating was the registered proprietor of several pieces of lands in Butterworth and sought to develop them. On 6 January 1997 the plaintiff and Cherating entered into 212 sale and purchase agreements for the purchase by the plaintiff of 212 shop offices, to be constructed in 53 blocks of four-storey shop offices.

[5] The total sale price for these shop offices would have been RM43,762,230, but according to the plaintiff, Cherating through a Jeffrey Chuah Beng Hock gave a discount in the form of 16 units of shop offices, such that the total purchase price for the 212 units was reduced to RM40,444,470. The plaintiff tendered evidence that it, through Tan Aik Teck, its director, had paid the purchase price in full, *via* five cheques issued from Tan's own account. These cheques were issued in the period between 20 December 1996 and 18 January 1997. It is noted that two of the cheques were issued even before the sale and purchase agreements were executed.

[6] Tan testified that he had advanced the purchase price for the plaintiff, which was a family company in which he and his siblings were shareholders.

[7] Woolley disputed the fact that payment had been made, and that it had been received by Cherating.

[8] The plaintiff lodged a private caveat on the master titles under which the properties that it had contracted to purchase were held. This caveat was registered in 11 August 1997.

[9] As mentioned above, the project was abandoned by Cherating around 1998, and on 20 September 2000, Woolley and Cherating entered into an agreement entitled agreement for the transfer of land (referred to here as the land transfer agreement) for Woolley to acquire the subject land and to rehabilitate project. Based on the evidence at trial, it was established and not disputed that Woolley had conducted a search on the master titles and discovered the plaintiff's caveat before Woolley executed the land transfer agreement. Annexure C to the land transfer agreement specified the existence of the plaintiff's caveat. However the land transfer agreement did not specify the plaintiff as a purchaser with whom a novation needed to be entered into pursuant to cl. 4.1(e)(vii).

[10] In April 1998, the plaintiff entered into two novation agreements to transfer its rights and obligations under twenty of the 212 sale and purchase agreements to third parties. Hence the plaintiff's claim in this suit is limited to 192 sale and purchase agreements (the SPAs) that it had entered into with Cherating, in respect of 48 blocks of shop offices.

[11] In 2001, Tan discovered from a newspaper report that Woolley had taken over the project. A letter of demand was issued to Woolley on behalf of the plaintiff on 21 December 2001. (This letter had been mistakenly dated 21 January 2001 instead of 21 December 2001. Nothing however turns on this point.)

[12] The status of the shop offices that are the subject of the SPAs are as follows:

(a) Four blocks of shop offices had been fully completed by Woolley. These were sold by Woolley to third parties. These properties, the details of which are set out in annexure A to this judgment, are referred to in this judgment as the four blocks;

(b) Four more blocks had their facades constructed but are otherwise empty shells. The details of these properties are set out in annexure B; and

(c) The remaining shop offices have not been built at all. The details of the lands which these shop offices were to have been build are set out in annexure C.

[13] The plaintiff's claims in this suit were premised on:

(a) Contract, by which it alleged that Woolley is bound by the terms of the SPAs (notwithstanding that Woolley was not a party to the SPAs);

(b) The tort of conspiracy, by which it alleged that Woolley had entered into the land transfer agreement to defraud or cause injury to the plaintiff; and

(c) Equitable principles, by which it claimed that it was unconscionable for Woolley to assert beneficial ownership to the properties that are the subject of the SPAs and that accordingly Woolley holds the rights, title and interest to such properties on trust for the plaintiff.

[14] These are considered in turn in the following paragraphs.

The Plaintiff's Contractual Claim

[15] In considering the plaintiff's contractual claim, I will first examine the question of whether payment had in fact been made by the plaintiff to Cherating. This is a pertinent consideration on the basis that a party to a contract must have performed or substantially performed its obligations (or is ready and willing to perform if its obligations remain executory) before it may claim performance by the other party. Secondly, I will address the issue of whether Woolley is bound by the terms of the SPAs by virtue of

s. 26(b) of the Specific Relief Act 1950 (paras. 40 to 57, post). I will then consider the common law principle that a person may not take the benefit of a contract without being subject to its burdens, and whether Woolley is for this reason bound by the terms of the SPAs (paras. 58 to 98, post).

Whether The Plaintiff Had Made Payment To Cherating

[16] The first issue that arises is whether the plaintiff had in fact made payment of the purchase price to Cherating.

[17] At trial, the plaintiff adduced the original cheques that had been used to make payment to Cherating, together with the various endorsements that indicated that the cheques had been processed for payment. The plaintiff called an officer of Malayan Banking Bhd, Norhamidi Ahmad, who testified that, based on the endorsements, the cheques had been cleared for payment and the money credited into the account of Cherating. This evidence was corroborated by a witness called by Woolley, Wan Yusfazila Wan Yusof, also a bank officer for Malayan Banking Bhd.

Admissibility Of Evidence

[18] Counsel for the defendants sought to exclude the evidence of the offer for discount and the evidence relating to the payment of the purchase price by the plaintiff to Cherating, on the basis that ss. 91 and 92 of the Evidence Act 1950 preclude the adduction of extrinsic evidence to prove the terms of the SPAs, or to contradict, vary, add to or subtract from their terms.

[19] However, the dispute at hand is not a matter of construction of the terms of a contract. The plaintiff is not seeking to prove a particular term of the SPAs, but rather to show the fact that payment had been made.

[20] In as far as the offer for discount is concerned, I find that the existence of a discount is not inconsistent with the terms of the SPA, and is admissible pursuant to proviso (b) of s. 92 of the Evidence Act 1950.

[21] I also had the benefit of closely observing the demeanour of Tan, the director of the plaintiff, when he was giving testimony at trial, and found no reason to doubt his testimony, particularly given that his evidence regarding payment was corroborated by independent witnesses from Malayan Banking Bhd, including a witness called by Woolley.

[22] The case of *Tindok Besar Estate Sdn Bhd v. Tinjar Co*[2] can be distinguished because in that case, the Federal Court held that none of the provisos to s. 92 of the Evidence Act 1950 applied.

Sham Agreements

[23] Counsel for Woolley also argued that the SPAs are sham agreements on the basis that they had been given a false label in which the express purpose of the agreements does not correspond with their true purpose.

[24] This proposition is not, in my judgment, supported by the evidence. While it is unusual for the purchase price to be paid in full prior to the completion of a property and for part of the payment to be made even before execution of formal documentation, the evidence of Tan is corroborated by contemporaneous documentary evidence and independent testimony to show that payment had indeed been made to and received by Cherating. The discount arrangement was not documented in writing, but this does not make the SPAs sham documents, as alleged by counsel for Woolley, for it cannot be said that there was some ulterior purpose that was disguised within the express words of the SPAs.

The Clean Hands Principle

[25] It was further advanced on behalf of Woolley that the plaintiff ought not be entitled to specific performance based on the clean hands principle. In support for his proposition, the learned counsel for Woolley enumerated arguments relating the plausibility of Tan's evidence.

[26] This argument may be dismissed for the reason that the veracity or otherwise of Tan's testimony does not go towards showing that there was improper conduct on the part of the plaintiff. In any event, I have found Tan to be a reliable witness.

Proof Of Antecedent Facts

[27] Encik Prakash Lachimanan for Woolley further argued that, other than Tan's testimony, the plaintiff had failed to adduce evidence to show that:

(a) Jeffrey Chua was authorised to act on behalf of Cherating to make the offer for the discount to the plaintiff;

(b) Tan was authorised by the plaintiff to accept such offer; and

(c) The plaintiff had agreed for Tan to advance the purchase price on its behalf.

[28] Counsel for the plaintiff rightfully pointed out in riposte that these points were not raised in cross-examination of Tan. The failure of counsel to specifically put his case pertaining to the lack of authorisation precluded him from raising it in argument.

[29] Encik Prakash drew my specific attention to the fact that the evidence from Wan Yusfazila, the officer of Malayan Banking Bhd, showed that the amounts deposited into Cherating's accounts were withdrawn shortly after they had been deposited. However, this does not change the fact that payment had been made. The fact that the amounts were withdrawn does not, without more, prove that there existed a conspiracy between the plaintiff and Cherating to defraud or occasion loss to Woolley (as stated in para. 12 of Woolley's re-amended statement of defence).

Section 114(g) Of The Evidence Act 1950

[30] Counsel for Woolley submitted that an adverse inference ought to be drawn against the plaintiff for failing to call as witness Jeffrey Chuah to prove the existence of the offer for discount and the acceptance of the cheques, or one KS Lee of Cherating or any lawyer from Messrs. Lee, Perara & Tan (counsel for the plaintiff at the material time) in respect of the letters that indicated that the purchase price under the SPAs had been paid.

[31] In my judgment, the existence of the offer for discount and the fact of payment have been proven by independent means and without the need to call Chuah, KS Lee or Messrs. Lee, Perara & Tan. I am satisfied by the testimony of Tan as to the existence and terms of the discount offer, and the fact that payment had been made was borne out by the witnesses from Malayan Banking Bhd. Moreover, the counsel for Woolley did not at trial raise as an issue the absence of such persons to testify, and as such Encik Prakash cannot now move the court to draw an adverse inference on such absence. See *Sarkar's Law of Evidence*[3], which states:

> No inference should be drawn against a party for not producing a material witness where the question of the absence of such witness was not raised at the trial [*Banwari v. Mohesh*, 45 IA 284: 41 A 63: 24 CWN 577]

Probative Value Of The Letters From Messrs. Lee, Perara & Tan And Cherating

[32] Encik Prakash submitted that the court should be cautious in considering the probative value of the letters from Messrs. Lee, Perara & Tan and from Cherating[4], as the makers of the statements contained in the letters were not called to testify in court.

[33] The reason these documents had been adduced by the plaintiff was to show that the purchase price for the shop offices had been fully paid by the plaintiff to Cherating.

[34] As I have stated in para. 31 *ante*, I am satisfied that the payment had in fact been made, even without reference to these letters. The inclusion of the letters in evidence simply serves to corroborate the testimonies of the bank officers that full payment had been made under the SPAs.

Amendment To The Statement Of Claim

[35] Counsel for Woolley drew my attention to the fact that the statement of claim was amended only after the decision of the Court of Appeal setting aside the injunction previously obtained against Woolley.

[36] It is no longer open to Woolley at this stage to raise any issue with respect to the amendment of the statement of claim, as any objection ought to have been taken up at the hearing of the application for amendment. As for the decision of the Court of Appeal[5] commenting on the same issues as I had observed in para. 24 *ante*, that decision was made at an interlocutory stage of proceedings, without the benefit of a full trial having taken place.

[37] Having heard and evaluated the *viva voce* evidence, I find that the plaintiff has paid in full the purchase price under the SPAs to Cherating.

[38] In coming to this decision, I have also considered the submissions of counsel in full, despite the fact that I may not have specifically addressed in this judgment all the arguments in detail, as I do not consider it necessary nor desirable to do so, particularly given that the fact that payment had been made has been independently established by the witnesses from Malayan Banking Bhd.

Whether The SPAs Are Binding On Woolley

[39] The question whether the SPAs are binding on Woolley is answered by examining, firstly, the issue of whether s. 26(b) of the Specific Relief Act 1950 operates to bind Woolley to the terms of the SPAs, and secondly the issue of whether the common law principle of benefits and burdens applied. These are considered in turn in the following paragraphs.

Section 26(b) Of The Specific Relief Act 1950

[40] Section 26(b) of the Specific Relief Act 1950 provides as follows:

> Except as otherwise provided by this Chapter, specific performance of a contract may be enforced against-
>
> …
>
> (b) any other person claiming under a party to the contract by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract;
>
> ILLUSTRATIONS
>
> (a) A contracts to convey certain land to B by a particular day. A dies intestate before that day without having conveyed the land. B may compel A's heir or other representative in interest to perform the contract specifically.
>
> (b) A contracts, in consideration of RM1,000, to bequeath certain of his lands to B. Immediately after the contract A dies intestate, and C takes out administration to his estate. B may enforce specific performance of the contract against C.
>
> (c) A contracts to sell certain land to B. Before the completion of the contract, A becomes mentally disordered, and C is appointed his committee. B may specifically enforce the contract against C.

[41] The plaintiff contended that Woolley is a person who is claiming under Cherating by a title arising subsequent to the SPAs, and as such the SPAs may be specifically enforced against Woolley. Woolley's counterargument was that s. 26(b) does not apply on the basis that Woolley is not claiming under Cherating, and is not claiming title over the land.

The argument was not advanced on behalf of Woolley that it is a transferee for value who has paid its money in good faith and without notice of the SPAs, although I will also address this point here.

[42] Before delving into the merits of counsel's arguments, it is useful at this point to consider the Malaysian cases on s. 26(b).

[43] The facts of *Tan Sin Thew lwn. Rintas Sdn Bhd & Satu Lagi*[6] are similar to that of the present case, save that in that case:

(a) The fact that the plaintiff had paid the purchase price was specified in the sale and purchase agreement entered into between the vendor and subsequent purchaser; and

(b) Title to the property was registered in the name of the subsequent purchaser.

[44] Faiza Tamby Chik J ordered the transfer of the land from the subsequent purchaser to the plaintiff, on the basis that the subsequent purchaser had notice of the prior agreement between the plaintiff and the vendor and therefore could not avail itself of the proviso to s. 26(b). The learned judge further held that the burden of proof lay on the subsequent purchaser to show that he was a *bona fide* purchaser for valuable consideration without notice of the prior of contract, and in this connection cited the case of *Ong Chat Pang & Anor v. Valliappa Chettiar*[7].

[45] In *Ong Chat Pang*, the Federal Court held that the third and fourth defendants, who had acquired title to the disputed land subsequent to the contract between the vendor and the plaintiff for the sale of the same land, bore the burden of proving that they were *bona fide* purchasers for value. Suffian FJ cited with approval the *dicta* of Lord Thankerton in the decision of the Judicial Committee of the Privy Council in *Bhup Narain Singh v. Gokhul Chand Mahton*[8], where he referred to the provisions of the Indian Evidence Act that were in *pari materia* with ss. 103 and 106 of our Evidence Act 1950. These provisions place the burden of proving a fact on the person asserting the fact, and require any fact especially within the knowledge of a particular person to be proved by that person.

[46] There are various other Malaysian cases in which s. 26(b) of the Specific Relief Act 1950 has been referred to, including the Federal Court decision in *Takako Sakao v. Ng Pek Yuen & Anor*[9] cited in argument by counsel for the plaintiff, but the *rationes decidendi* of those cases were not grounded in the construction of s. 26(b).

[47] Counsel for Woolley argued that Woolley did not purchase the subject land from Cherating, and that the purpose of the land transfer agreement was for Woolley to rehabilitate and complete the project. Accordingly (counsel argued), Woolley is not claiming under Cherating by a title arising subsequent to the SPAs.

[48] I find this argument disingenuous because it is contrary to Woolley's own pleaded case[10], where Woolley had stated that it had acquired the whole of the beneficial title to the disputed lands. In addition, the land transfer agreement is on its true construction an agreement which intended to transfer the legal and beneficial title to the subject lands to Woolley, in consideration of the mutual undertakings contained in the agreement. These undertakings would include the best endeavours clause contained in cl. 3.2 to attain the object of rehabilitating the development project, as well as an undertaking from Woolley to retransfer a portion of the land on which a mall was to have been built. This construction is supported by the fact that the land transfer agreement required the duly executed transfer forms to be deposited with Woolley, which based on the evidence received at trial has been complied with. In other words, the land transfer agreement is a sale and purchase agreement in all but name.

[49] The fact that legal title to the disputed lands does not lie with Woolley (but in fact remains with Cherating) is immaterial. If, pursuant to s. 26(b) of the Specific Relief Act 1950, a prior agreement can, in *Tan Sin Thew lwn. Rintas Sdn Bhd & Satu Lagi* defeat the title of a subsequent purchaser who had been registered as the proprietor of the land, then a *fortiori* it must be capable of defeating the beneficial title of a subsequent purchaser. The fact that Woolley claims in contract and not as a registered proprietor of the disputed lands does not in any way weaken the plaintiff's case against it.

[50] That "title" in s. 26(b) must be read to include beneficial title is supported by a consideration of the policy objectives of the provision. To hold otherwise would mean that a subsequent purchaser could escape the effects of s. 26(b) by the simple expedient of remaining an unregistered proprietor.

[51] I am fortified in my views by the Indian case of *Mahadeo Keshav Lingarkar v. Shamrao Balwant Kesarker*[11], where it was held in relation to s. 27(b) of the Indian Specific Relief Act, 1877 that "title" means not only a legal title but also an equitable title which a transferee may acquire in any property by virtue of a contract of transfer. Section 27(b) of the Indian 1877 Act is in *pari materia* with the Malaysian s. 26(b), with the only difference being the word "him" appearing in place of the words "a party to the contract" in our legislation.

[52] The fact that the land in question has been charged to Malaysian Building Society Bhd is immaterial, and does not change the nature of Woolley's interests in the subject land.

[53] Counsel for Woolley in his written submissions made a number of other arguments in support of the case for his client, including the proposition that s. 23(a) and (c) of the Specific Relief Act 1950 bar the

plaintiff from the relief that it seeks. I am unable to agree with his submissions. I do not propose to enumerate the arguments advanced for Woolley here, but would add the following brief reasons for my views:

(a) If s. 23(a) is read to mean that s. 26(b) would only apply if there is privity, this would vitiate the entire purpose of s. 26(b). Such a construction would be contrary to logic;

(b) Counsel for Wooley cited the Indian case of *Jhandoo v. Ramesh Chandra*[12] in support for this proposition, but failed to mention that in that case, the court found that the contract in question could not be enforced against the transferee because the conduct of the plaintiff had caused equities to appear in favour of the transferee and therefore disentitled the plaintiff from obtaining relief under s. 27(b) of the Indian Act[13]. If no such equities had arisen, it is clear in my mind that s. 19 of the Indian Act (equivalent to our s. 18) would have operated to enable the plaintiff to obtain damages in addition to or in substitution for specific performance. No such equities have arisen in favour of Woolley in the present instance; and

(c) Section 23(c) of the Specific Relief Act 1950 does not bar the plaintiff from seeking relief for specific performance, as the plaintiff cannot be said to have obtained satisfaction for the breach of contract. It is still short of 48 blocks of shop offices.

[54] In my judgment, Woolley is a person who is claiming under Cherating by a title arising subsequent to the SPAs, and as such the SPAs may be specifically enforced against Woolley by virtue of s. 26(b) of the Specific Relief Act 1950.

[55] Counsel for Woolley has not sought to argue that Woolley is a transferee for value who has paid his money in good faith and without notice of the SPAs and therefore comes within the proviso to s. 26(b). Accordingly, it is not necessary for me to rule on this matter. Nonetheless, for the sake of completeness, I would add the following remarks:

(a) Counsel for the plaintiff sought to argue that, because Woolley had not paid cash consideration under the land transfer agreement, it is not a transferee for value who has paid his money in good faith. I am of the contrary view, which is that it not necessary for cash to have passed between the transferee and the vendor. It suffices if the transferee had provided valuable consideration, and this may take the form of undertakings, such as those contained in the land transfer agreement, some of which has been described in para. 48, *ante*. The use in s. 26(b) of the word "money" does not mean that actual cash consideration needs to move from the transferee to the vendor. All that is necessary is for the court to be satisfied that there has been valuable consideration, due to the use of the word "value" in s. 26(b). In the limited context of

specific performance against non-parties under s. 26(b), good consideration is not adequate (*Pamaron Holdings Sdn Bhd v. Ganda Holdings Bhd*[14] is accordingly distinguished);

(b) The entry of a caveat on the land in question would operate to constitute actual notice to Woolley, not only of the fact that the plaintiff has a caveatable interest but also of the nature of that interest, to the extent that such interest has been specified in the caveat lodgement form. In the present instance, the relevant form 19B sufficiently specifies the nature of the plaintiff's interest such that Woolley would have notice of the "original contract", which in this case refers to the SPAs. See *Pekan Nenas Industries Sdn Bhd v. Chang Ching Chuen & Ors*[15], a decision of the Federal Court, as authority for the proposition that a caveat constitutes notice to the world of its contents[16];

(c) Counsel for the plaintiff cited the case of *Mohammad Aslam Khan v. Feroze Shah*[17], a decision of the Judicial Committee of the Privy Council on appeal from Pakistan (then known as the North-West Frontier Province), for the proposition that (and I paraphrase) constructive notice is sufficient to constitute "notice" for the purposes of s. 27(b) of the Indian Act. However, Gopal Sri Ram JCA in *Aik Ming (M) Sdn Bhd & Ors v. Chang Ching Chuen & Ors & Another Case*[18] expressed doubts as to whether the doctrine of constructive notice applies to contracts for the sale of land in the face of the system for the protection of interests by the entry of caveats[19]. I note that the decision of the Court of Appeal in *Aik Ming (M) Sdn Bhd & Ors* was reversed by the Federal Court in *Pekan Nenas*, *albeit* on other grounds. The remarks of Sri Ram JCA therefore remain instructive; and

(d) In *Aik Ming (M) Sdn Bhd & Ors*, His Lordship also accepted as well-settled the principle that the knowledge of a solicitor is regarded by the law as the knowledge of the client. Accordingly, if a solicitor obtains the results of a caveat search but does not bring the results of the search to the attention of his or her client, the client is nonetheless deemed to have actual notice of the caveat.

[56] In summary, the SPAs are binding on Woolley by virtue of s. 26(b) of the Specific Relief Act 1950. Woolley did not seek to prove that it is a *bona fide* transferee for valuable consideration without notice of the SPAs, but even if it had done so, I would have held that the entry of the caveat by the plaintiff would have constituted notice to Woolley of its interests under the SPA.

[57] In the following paragraphs, I consider the common law principle of benefit and burdens and the limited circumstances under which a contract can bind a stranger. Again, this is strictly not necessary in the light of my findings on s. 26(b) of the Specific Relief Act 1950, but I include the

discussion for completeness, and not least for the reason that counsel have taken the trouble to advance their arguments in their written submissions and therefore it behoves me to address such arguments.

The Doctrine Of Benefit And Burdens

[58] It was advanced on behalf of the plaintiff that Woolley is the successor in title and/or permitted assign of Cherating within the meaning of cl. 41 of the SPAs. Clause 41 provides, among others, that each SPA is binding on the successors in title and permitted assigns of Cherating, as the vendor of the subject properties.

[59] While I am prepared to accept that Woolley is the permitted assign of Cherating, I am of the view that cl. 41 in the SPAs is not effective to impose upon Woolley obligations contained in the SPAs, for the simple reason that Woolley was not a party to the SPAs.

[60] In my judgment, the effect of cl. 41 is to impose upon the parties to the SPAs an obligation to ensure that, in the event that any of the rights under the SPA is assigned to any third party, the assignor is contractually obligated to ensure that the assignee undertakes to comply with the obligations of the assignor under the SPAs. Where the assignor fails to do so, the other party may terminate the SPA in question, or specifically enforce it, requiring the assignor to procure that the assignee adheres to the terms of the SPA.

[61] To hold otherwise would be to militate against the fundamental principle of privity of contract.

[62] Encik Su Tiang Joo for the plaintiff cited two cases in support of his argument that cl. 41 operated to bind Woolley, both of which I find distinguishable from the facts of the present case.

[63] In *Woolley Development Sdn Bhd v. Mikien Sdn Bhd*[20], a case involving the same development project, Woolley had not disputed that it was the successor in title and permitted assign of Cherating, and so the Court of Appeal held that the terms of the sale and purchase agreement entered into between Mikien and Cherating was binding on Woolley. This is patently not the case here, where Woolley is disputing that it was a successor in title or permitted assign of Cherating. The principal obstacle to the plaintiff's argument still remains: Woolley was not a party to the SPAs, and the SPAs could not have operated to bind a stranger.

[64] The second case was *Golden Vale Golf Range & Country Club Sdn Bhd v. Hong Huat Enterprises Sdn Bhd*[21]. In this case, the Court of Appeal accepted the finding of fact by the judge at first instance, which is that the plaintiff, Golden Vale, was a nominee of a certain Madam Chun, and that Airport Auto, the vendor who had sold a share of the subject land to the defendant was an agent of Madam Chun. The corporate veil between the plaintiff and Airport Auto was lifted, and it was held that the prior agreement entered into

by Airport Auto was binding on the plaintiff. Accordingly, this case should not be regarded as an authority for the proposition that a contract expressed to be binding on the successors and assigns of a party to the contract will, without more, bind such third party in the absence of any agreement by that third party to be bound by the contract.

[65] Nonetheless, there are instances where the courts have held that an agreement may operate to bind third parties despite the fact that such third parties may not be a party to the original contract.

[66] In their written submissions, counsel for the plaintiff cited the following passage from the case of *Halsall v. Brizell*[22]:

> [I]t is ancient law that a man cannot take benefit under a deed without subscribing to the obligations thereunder. If authority is required for that proposition, I need but refer to one sentence during the argument in *Elliston v. Reacher*, 4 where Lord Cozens-Hardy MR observed: "It is laid down in Co Litt 230b, that a man who takes the benefit of a deed is bound by a condition contained in it, though he does not execute it".

[67] *Halsall v. Brizell* involved a covenant to pay a sum for the upkeep of roads and sewers contained in a deed executed in 1851. The defendants were the executors of the estate of a purchaser of one of the plots of land in a housing estate, who had acquired the land in 1931. The judge held that the defendants could not enjoy the benefits conferred by the 1851 deed, including the use of the access roads and the sewer system, without undertaking the obligation to pay the maintenance fee as required under the deed, notwithstanding that the purchaser was not a party to the original deed.

[68] Although the preceding paragraph appears to be the accepted *ratio* of the case, it may be observed that the judge had stated that the 1931 conveyance was "subject to the covenants contained in the deed of 1851", which suggests that an alternative ground may be advanced to explain the decision. This is that the terms of the 1851 deed had been incorporated by reference into the 1931 conveyance, and so was binding on the executors of the estate of the purchaser.

[69] The argument was advanced on behalf of the plaintiff that the "pure principle" as enunciated by Megarry VC in *Tito v. Waddell No 2*[23] applies such that a positive obligation can be imposed on a stranger. The following passage explains the pure principle of benefit and burden, in contradistinction from conditional benefits:

> One of the most important distinctions is between what for brevity may be called conditional benefits, on the one hand, and on the other hand independent obligations. An instrument may be framed so that it confers only a conditional or qualified right, the condition or qualification being that certain restrictions shall be observed or certain burdens assumed, such as an obligation to make certain payments. Such restrictions or qualifications are an intrinsic part of the right: you take the right as it stands, and you cannot pick out the good and reject the bad. In such cases

A it is not only the original grantee who is bound by the burden: his successors in title are unable to take the right without also assuming the burden. The benefit and the burden have been annexed to each other *ab initio*, and so the benefit is only a conditional benefit. In the other class of case the right and the burden, although arising under the same instrument, are independent of each other: X grants a right to Y and by
B the same instrument Y independently covenants with X to do some act. In such cases, although Y is of course bound by his covenant, questions may arise whether successors in title to Y's right can take it free from the obligations of Y's covenant, or whether they are bound by them under what for want of a better name I shall call the pure principle of benefit and burden.[24]
C

[70] The argument on the "pure principle" is, with respect to counsel, a red herring. The key issue at hand is not whether the benefit under the SPAs (ie, the right to receive the purchase price) is a conditional benefit or a benefit that is independent of the obligations under the SPAs. The key issue is
D whether there could be said to have accrued to Woolley a benefit under the SPAs, such that Woolley becomes bound by the obligations therein, which is to construct and deliver the shop offices.

[71] Counsel for the plaintiff cited the case of *Law Debenture Trust Corporation v. Ural Caspian Oil Corporation Ltd*[25] in argument. Briefly, this case
E involved four English companies whose assets were confiscated by the Soviet government following the Bolshevik revolution in 1917. The Soviets refused for many years to pay compensation. In 1986, a company called Leisure Investments (Overseas) Ltd acquired the entire issued share capital of the four companies from their registered shareholders. This company, which
F I shall refer to as Leisure Overseas, covenanted with the Law Debenture Corporation, the plaintiff acting as trustee, to apply any compensation received for the benefit of the shareholders of the four companies from whom Leisure Overseas acquired the shares, and not to transfer the shares unless the transferee similarly covenants to the Law Debenture Corporation. In 1989, in a *volte-face* in the wake of the Soviet policy of glasnost, the four
G companies were paid £7.2 million compensation. Before this payment was received, Leisure Overseas sold the shares in the four companies to the fifth defendant Hilldon, without requiring Hilldon to covenant to the plaintiff, which was in breach of its own covenant to the plaintiff.

H **[72]** It was held that Hilldon was not bound by the covenants. The principle of benefit and burden would not apply because the benefit that accrued to Hilldon arose through the share purchase agreements entered into between Leisure Overseas and the original registered shareholders, whereas the burdens sought to be imposed arose in separate covenants between
I Leisure Overseas and the plaintiff, the Law Debenture Corporation. Per Hoffmann J, in this case:

The leading example of the "pure principle" is *Halsall v. Brizell* [1957] Ch 169. Upjohn J said, *obiter*, at p 183 that successors in title to the original purchasers of houses on an estate laid out in 1851 could not take the

benefit of rights to use the estate roads and sewers which had been granted by a deed between the owners and the original purchasers unless they also accepted obligations in the deed to contribute to the upkeep of the estate. The two other cases mentioned by the judge also concerned rights of property conferred by an instrument or transaction which created reciprocal obligations.

The present case differs from any case which might embody the "pure principle". The right and burden do not arise under the same instrument. The shares were transferred to Leisure Overseas by transfers from some of the registered shareholders while the covenant was made by Leisure Overseas with the plaintiff as trustee for all shareholders. Nor are the obligations clearly reciprocal. There is nothing in any transfer of the shares to which Hilldon and Caspian became successors in title which links them to the agreements.

[73] Counsel for the plaintiff cited the passages above as authority for the proposition that, if there is a link between the agreement by which the successor in title acquired title and the agreement by which the positive obligation is sought to be imposed on the successor in title, then the successor in title will be bound by the latter agreement.

[74] This in my view misstates the position in law and the *ratio* of the *Ural Caspian* case. As mentioned above, the reason why Hilldon was found not to be bound by the covenant was that the benefit and burden arose in separate contractual documents. The fundamental point in the present case is that there must have been a benefit that accrued to Woolley from the SPAs, in order that Woolley be bound to deliver the shop offices in accordance with the terms of the SPAs.

[75] The correct legal position is encapsulated neatly in the following passage of the decision of the English Court of Appeal in *Davies v. Jones*[26]:

Rhone v. Stephens and *Thamesmead Town Ltd v. Allotey* are binding on us. They establish a number of propositions the application of which are exemplified in the other cases to which I have referred, namely *Halsall v. Brizell*, that part of *Tito v. Waddell* which was not disapproved in *Rhone v. Stephens*, *Jenkins v. Young Bros Transport Ltd* and *Baybut v. Eccle Riggs Country Park Ltd*. In my view those propositions are:

(1) The benefit and burden must be conferred in or by the same transaction. In the case of benefits and burdens in relation to land it is almost inevitable that the transaction in question will be effected by one or more deeds or other documents.

(2) The receipt or enjoyment of the benefit must be relevant to the imposition of the burden in the sense that the former must be conditional on or reciprocal to the latter. Whether that requirement is satisfied is a question of construction of the deeds or other documents where the question arises in the case of land or the terms of the transaction, if not reduced to writing, in other cases. In each case it will depend on the express terms of the transaction and any implications to be derived from them.

A (3) The person on whom the burden is alleged to have been imposed must have or have had the opportunity of rejecting or disclaiming the benefit, not merely the right to receive the benefit.

[76] Accordingly, the benefit must be one that arose from the SPAs. Counsel for the plaintiff pointed out that Woolley has enjoyed the benefits
B of the land transfer agreement. This is, however, not relevant to the determination of the issue at hand.

[77] There is no evidence before this court to show that the purchase price paid by the plaintiff to Cherating was on-paid to Woolley.

C **[78]** However, at the time Woolley entered into the land transfer agreement with Cherating, it knew of the fact that the plaintiff had lodged a private caveat over the master titles for the subject properties. This fact was known to Woolley because the land transfer agreement made specific reference to the plaintiff and the existence of a caveat lodged by the plaintiff.

D **[79]** The caveat lodgement form (form 19B) dated 7 July 1997 contained an express statement that the plaintiff had paid in full the purchase price for the properties in question. Woo Yew Khuen, a director of Woolley who gave evidence at trial, testified that he believed that Woolley had obtained a copy of the form 19B before it signed the land transfer agreement with Cherating[27],
E even though he may not have personally reviewed the caveat lodgement form.

[80] I find that the knowledge of the contents of the form 19B is imputed to Woolley, on the basis that Woolley or, at the very least, its solicitors, had obtained a copy of the form. Accordingly, not only did Woolley know about
F the plaintiff's interest by virtue of the caveat, it also knew that the plaintiff had fully paid to Cherating the purchase price for the subject properties[28].

[81] This now brings us back to the issue of whether Woolley had received any benefit under the SPAs.

G **[82]** I find it inconceivable that an adroit property developer such as Woolley, knowing that there existed a caveat and that full payment of the purchase price had been paid by the plaintiff to Cherating, would not have taken into account such amount in negotiating with Cherating the transfer of the subject lands. Woolley was in a position where, *vis-à-vis* Cherating,
H it would have been obligated to complete the development of the project. It also knew that the plaintiff had already paid the purchase price under the SPAs, and thus would not receive any income from the construction of the shop offices that were the subject of the SPAs. Woolley must have necessarily therefore factored in this fact when negotiating the transfer of the land with Cherating. The benefit that accrued to Woolley would have taken
I the form of a reduction in the acquisition price of the land (which had in fact been transacted without the payment of cash consideration) or the inclusion of other terms favourable to it.

[83] In summary, I find that as a matter of fact a benefit under the SPAs had accrued to Woolley, even though there was no transfer of the purchase price under the SPAs from Cherating to Woolley. Having obtained the benefit of the SPAs, Woolley cannot now argue that it is not subject to their burdens.

[84] I now turn to the points raised in argument by counsel for the plaintiff in connection with the applicability of the "pure principle" of benefit and burden.

[85] In *Rhone v. Stephens*[29], the House of Lords disapproved of the pure principle as enunciated by Megarry VC in *Tito v. Waddell No. 2*[30]. Lord Templeman, with whom the other law lords agreed, held that the condition that is being sought to be enforced on a stranger must be relevant to the exercise of the right in question. He further noted that *Halsall v. Brizell* was precisely a case where a condition sought to be enforced was relevant to the exercise of the right. The defendant in that case could not exercise the right to use the roads and sewers without paying his proportion of the maintenance costs. The right was subject to the attached condition for payment.

[86] Accordingly it follows that the *dicta* of Hoffmann J in the *Ural Caspian* case[31] was incorrect, as *Halsall v. Brizell* was not in fact a case embodying the application of the pure principle.

[87] More to the point in as far as the present case is concerned, the obligation of the plaintiff to pay the purchase price is relevant and reciprocal to its rights to have delivered into its possession the shop offices. This case does not involve the application of the pure principle at all, which was why I considered the issue a red herring. However, as counsel had raised it in argument, it became necessary for me to deal with it specifically.

[88] I also find that at the time it signed the land transfer agreement, Woolley had the opportunity to disclaim the benefit of the SPAs (by, for example, excluding from the scope of the land transfer agreement the shop offices that are the subject of the SPAs), but it did not do so.

[89] In the following paragraphs, I address the arguments raised by counsel for Woolley.

[90] Encik Prakash quoted in argument the following *dicta* of Lord Templeman in *Rhone v. Stephens*:

> … that a negative covenant was enforceable in equity … enforcement of a positive covenant against a successor in title would contradict the common law rule that a person could not be made liable upon a contract unless he was a party to it.

[91] The context of this passage can be better appreciated if the paragraph is set out in full:

> Equity can thus prevent or punish the breach of a negative covenant which restricts the user of land or the exercise of other rights in connection with land. Restrictive covenants deprive an owner of a right

> which he could otherwise exercise. Equity cannot compel an owner to comply with a positive covenant entered into by his predecessors in title without flatly contradicting the common law rule that a person cannot be made liable upon a contract unless he was a party to it. Enforcement of a positive covenant lies in contract; a positive covenant compels an owner to exercise his rights. Enforcement of a negative covenant lies in property; a negative covenant deprives the owner of a right over property.

[92] This passage does not to my mind contradict the finding of this court. The finding of this court that the terms of the SPAs are binding on Woolley are the result of the application of the common law rule in contract that a person may not take the benefit of a contract without being bound by its burdens. The distinction between negative covenants and positive covenants is not relevant because I find that the covenant to construct and deliver the shop offices is enforceable not in equity but at common law.

[93] The distinction between the instant case and *Rhone v. Stephens* is that, in that case, the House of Lords found that the covenant for mutual support was independent of the covenant to keep the roof of the house in good repair, as can be seen from the following passages:

> Clause 2 of the 1960 conveyance had the effect, *inter alia*, of conferring and confirming on Walford House the right to be supported by the contiguous Walford Cottage. The 1960 conveyance also had the effect of conferring and confirming on Walford Cottage the right to be supported by Walford House. Clause 3 of the 1960 conveyance did not confer any rights on Walford Cottage but by its express terms it appears to confer on the owners for the time being of Walford Cottage the right to sue the owner for the time being of Walford House for damages if the roof is not kept wind and watertight.
>
> …
>
> In *Halsall v. Brizell* there were reciprocal benefits and burdens enjoyed by the users of the roads and sewers. In the present case clause 2 of the 1960 conveyance imposes reciprocal benefits and burdens of support but clause 3 which imposed an obligation to repair the roof is an independent provision. In *Halsall v. Brizell* the defendant could, at least in theory, choose between enjoying the right and paying his proportion of the cost or alternatively giving up the right and saving his money. In the present case the owners of Walford House could not in theory or in practice be deprived of the benefit of the mutual rights of support if they failed to repair the roof.

[94] I have held in the present case that the obligation of the plaintiff to pay the purchase price under the SPAs are relevant and reciprocal to the obligation of Cherating to construct and deliver the shop offices. Accordingly, this case is not one involving the pure principle of benefit and burdens, which the House of Lords declined to recognise in *Rhone v. Stephens*.

[95] Encik Prakash also cited a number of other cases involving the same defendants and the same development project. I have discussed and distinguished *Mikien*'s case at para. 63, *ante*.

[96] In *Chan Soo Lee v. Cherating Development Sdn Bhd & Woolley Development Sdn Bhd*[32], the learned judge made a finding of fact that the full purchase price had not been paid. In addition, it was also found that the plaintiff had not met the defendant to discuss the signing of a novation agreement when requested to do so.

[97] In *Kean Yick Enterprise Sdn Bhd v. Cherating Development Sdn Bhd & Anor And Other Cases*[33], the High Court found that the plaintiff had not proven that the purchase price had been paid. Similarly it was held in *Lau Kim Piaw v. Cherating Development Sdn Bhd & Woolley Development Sdn Bhd*[34] that the sale and purchase agreements between the plaintiff in that case and Cherating were void for want of consideration, on the basis that the plaintiff was not able to prove that full payment of the purchase price had been made.

[98] Accordingly, I find that the present case is distinguishable on its facts from these cases cited in argument by Encik Prakash, as I am satisfied that full payment of the purchase price had been made by the plaintiff to Cherating.

[99] To summarise my findings on the issue of the effect of the SPAs: I find the SPAs are binding on Woolley:

(a) By virtue of s. 26(b) of the Specific Relief Act 1950, as Woolley is a person who is claiming under Cherating by a title arising subsequent to the SPAs; and

(b) As a result of the application of the common law rule in contract that a person may not take the benefit of a contract without being bound by its burdens.

Breach Of The Terms Of The SPAs

[100] It was not disputed in evidence that the shop offices that are the subject matter of the SPAs (other than the four blocks) have not been constructed to completion. I therefore find that Woolley has breached the terms of the SPAs.

[101] In addition, Woolley has breached the SPAs relating to the four blocks by selling these properties to third parties.

Losses

[102] As a consequence, I further find that the failure by Woolley to construct the shop offices that are the subject of the SPAs (other than the four blocks) and the sale by Woolley of the four blocks to third parties have resulted in loss and damage to the plaintiff.

[103] In summary:

(a) The SPAs are binding on Woolley by virtue of s. 26(b) of the Specific Relief Act 1950, as Woolley is a person who is claiming under Cherating by a title arising subsequent to the SPAs;

(b) Woolley is the successor in title to Cherating within the meaning of cl. 41 of the SPAs. However, cl. 41 of the SPAs is not effective by and of itself to bind Woolley;

(c) Woolley not only knew about the existence of the plaintiff's caveat prior to signing the land transfer agreement with Cherating, but it had also known at that time that the plaintiff had paid the purchase price under the SPAs in full to Cherating;

(d) Although cl. 41 of the SPAs is not effective to bind Woolley, the SPAs are nonetheless binding on Woolley, as Woolley had obtained a benefit under them and must accordingly be subject to their burdens;

(e) I find that there has been a breach by Woolley of the terms of the SPAs; and

(f) I further find that the plaintiff has suffered loss as a result of such breach.

Conspiracy

[104] The ingredients of the tort of conspiracy are as follows:

(a) There is an agreement between two or more persons;

(b) Such agreement is for the purpose of injuring or defrauding the plaintiff; and

(c) The acts done in execution of that agreement resulted in damage to the plaintiff.[35]

[105] In the present case, the plaintiff alleged that the defendants had conspired to defraud the plaintiff. The standard of proof where conspiracy to defraud is alleged is the same as where fraud is alleged.[36] Accordingly, the plaintiff must prove its case beyond a reasonable doubt.

[106] The plaintiff submitted that the land transfer agreement was entered into by Woolley and Cherating with the purpose of injuring the plaintiff, as the name of the plaintiff as a purchaser who had entered into the SPAs was deliberately left out from annexure H of the land transfer agreement.

[107] In my judgment, the plaintiff has not proven its case against Woolley for conspiracy to defraud beyond reasonable doubt. Even though Woolley had known of the existence and nature of the plaintiff's caveat, I am not satisfied that the omission of the plaintiff's name from annexure H was done with the connivance of representatives of Woolley. Indeed, there is in fact no evidence before me to suggest that such was the case.

The Plaintiff's Claim In Equity

[108] The plaintiff claimed the shop offices and pieces of land that are the subject of the SPAs are held on trust by Woolley as a constructive trustee for the benefit of the plaintiff. The following passage is an excerpt from the judgment of Millett LJ in *Paragon Finance plc v. DB Thakerar & Co*[37], a decision that has been cited with approval by the Malaysian Court of Appeal[38]:

> A constructive trust arises by operation of law whenever the circumstances are such that it would be unconscionable for the owner of property (usually but not necessarily the legal estate) to assert his own beneficial interest in the property and deny the beneficial interest of another. In the first class of case, however, the constructive trustee really is a trustee. He does not receive the trust property in his own right but by a transaction by which both parties intend to create a trust from the outset and which is not impugned by the plaintiff. His possession of the property is coloured from the first by the trust and confidence by means of which he obtained it, and his subsequent appropriation of the property to his own use is a breach of that trust. Well-known examples of such a constructive trust are *McCormick v. Grogan* (1869) LR 4 HL 82 (a case of a secret trust) and *Rochefoucald v. Boustead* [1897] 1 Ch 196 (where the defendant agreed to buy property for the plaintiff but the trust was imperfectly recorded). *Pallant v. Morgan* [1952] 2 All ER 951, [1953] Ch 43 (where the defendant sought to keep for himself property which the plaintiff trusted him to buy for both parties) is another. In these cases the plaintiff does not impugn the transaction by which the defendant obtained control of the property. He alleges that the circumstances in which the defendant obtained control make it unconscionable for him thereafter to assert a beneficial interest in the property.
>
> The second class of case is different. It arises when the defendant is implicated in a fraud. Equity has always given relief against fraud by making any person sufficiently implicated in the fraud accountable in equity. In such a case he is traditionally though I think unfortunately described as a constructive trustee and said to be 'liable to account as constructive trustee'. Such a person is not in fact a trustee at all, even though he may be liable to account as if he were. He never assumes the position of a trustee, and if he receives the trust property at all it is adversely to the plaintiff by an unlawful transaction which is impugned by the plaintiff. In such a case the expressions 'constructive trust' and 'constructive trustee' are misleading, for there is no trust and usually no possibility of a proprietary remedy; they are 'nothing more than a formula for equitable relief': *Selangor United Rubber Estates Ltd v. Cradock (No 3)* [1968] 2 All ER 1073 at 1097, [1968] 1 WLR 1555 at 1582 per Ungoed-Thomas J.

[109] The present instance falls in the second class of cases described by Millett LJ. The plaintiff is, however, seeking a proprietary remedy in respect of the shop offices that are the subject of the SPAs, other than the four blocks.

[110] A defendant would be liable to account as constructive trustee if he has knowledge of some factor that sufficiently affects his conscience to justify the intervention of the principles of equity. In connection with a proprietary constructive trust, the owner of a property will be liable to account if he has knowledge of some factor that affects the conscionableness of asserting beneficial title to that property. In such cases, it does not matter if the owner is the legal owner, or simply asserts beneficial ownership of the property in question.

[111] Although title to the lands that were the subject matter of the land transfer agreement remains with Cherating (which is in liquidation), Woolley is effectively the owner of the lands, due the following reasons:

(a) The land transfer agreement created an obligation on Cherating to convey the lands to Woolley;

(b) Cherating has already executed the relevant memoranda of transfer in favour of Woolley, which are now held in escrow by Woolley's solicitors; and

(c) An irrevocable power of attorney has been granted to Woolley by Cherating giving it the power to deal in the land.

[112] Furthermore, Woolley has also claimed in its defence that it is the beneficial owner of the lands.

[113] It has been established that Woolley not only knew about existence of the plaintiff's caveat prior to signing the land transfer agreement with Cherating, but also that it had known at that time that the plaintiff had paid the purchase price under the SPAs in full to Cherating. In my judgment, this state of mind is sufficient to justify the intervention of the principles of equity as it would be unconscionable for Woolley to claim, to the exclusion of the plaintiff, that it is the beneficial owner of the shop offices that were the subject of the SPAs.

[114] I therefore hold that the plaintiff is the beneficial owner of the properties that are the subject of the SPAs (other than the four blocks) and that Woolley holds all and any rights, title and interest in such properties for the benefit of the plaintiff. The plaintiff has prayed for damages for breach of contract in respect of the four blocks; as such it will not be necessary or appropriate for me to further hold Woolley liable to account to the plaintiff as constructive trustee for the proceeds of sale of the four blocks.

Orders

[115] For the reasons set out above, there is judgment as follows:

(a) It is declared that:

(i) The SPAs are binding on Woolley and are enforceable by the plaintiff against Woolley;

(ii) The plaintiff is the beneficial owner of the properties that are the subject of the SPAs, other than the four blocks;

(iii) Woolley holds all and any rights, title and interest in the properties that are the subject of the SPAs other than the four blocks on trust for and for the benefit of the plaintiff;

(b) It is ordered that:

(i) The SPAs, other than those in respect of the four blocks, be specifically enforced against Woolley;

(ii) Woolley pays damages to the plaintiff:

(1) For breach of contract in respect of the SPAs, other than those relating to the four blocks, on account of the delay occasioned to the plaintiff with damages running from 20 September 2003 until vacant possession of the relevant properties are handed over by Woolley to the plaintiff;

(2) For breach of contract *in lieu* of specific performance in relation to the SPAs for the four blocks,

the quantum of which damages are to be assessed by this court, together with:

(3) Pre-judgment interest on the amount of such damages at a rate of 8% per annum from 20 September 2003[39] until 26 March 2015; and

(4) Post-judgment interest on the sum of (a) the amount of such damages, and (b) pre-judgment interest thereon determined in accordance with sub-para. (3), at a rate of 5% per annum from 27 March 2015 until full satisfaction of the judgment debt[40];

(iii) The titles for the properties that are the subject of the SPAs, other than those relating to the four blocks, are to be transferred to the name of the plaintiff as the registered proprietor and that the Registrar of the High Court be empowered to execute all necessary documents to give effect to such transfer; and

(iv) Woolley pays to the plaintiff costs of RM100,000.

[116] The details of the properties that are the subject of the SPAs (other than the four blocks) are set out in annexures B and C to this judgment. The details of the four blocks are set out in annexure A.

I H G F E D C B A

Annexure A — The Four Blocks

No.	Title Details	Unit Details				SPA between Cherating and Stadco		SPA between Woolley and Third Party Purchaser		Details of Third Party Purchaser
		Phase No.	Block No.	Unit No.	Level	Page reference	Date	Page reference in Bundle B2	Date	
1.	Geran No. 4503, PT Lot 788, Seksyen 2, Bandar Butterworth, Daerah Seberang Perai Utara, Negeri Pulau Pinang	1	A	2	G	Bundle 14(a), p. 1799-1827	6-1-1997	p. 168-187	25-2-2002	Teow Sook Inn @ Teo Ah Kiang
2.		1	A	2	1	Bundle 14(a), p. 1828-1856	6-1-1997	p. 188-207	25-2-2002	
3.		1	A	2	2	Bundle 14(a), p.1857-1886	6-1-1997	p. 208-227D	25-2-2002	
4.		1	A	2	3	Bundle 14(a), p.1887-1915	6-1-1997	Not built		NA
5.	Geran No. 4502, PT Lot 786, Seksyen 2, Bandar Butterworth, Daerah Seberang Perai Utara, Negeri Pulau Pinang	1	A	10	G	Bundle 14(a), p.1916-1945	6-1-1997	p. 228-263	8-10-2001	Thiagarajan a/l Krishnan
6.		1	A	10	1	Bundle 14(a), p.1946-1975	6-1-1997	p. 264-299	8-10-2001	
7.		1	A	10	2	Bundle 14(a), p. 1976-2004	6-1-1997	p. 300-335	8-10-2001	
8		1	A	10	3	Bundle 14(a), p. 2005-2033	6-1-1997	Not built		NA
9.		1	A	11	G	Bundle 14(a), p. 2034-2062	6-1-1997	p. 336-371	25-2-2002	Khaw Kian Leong
10.		1	A	11	1	Bundle 14(a), p. 2063-2091	6-1-1997	p. 372-407	25-2-2002	
11.		1	A	11	2	Bundle 14(a), p. 2092-2119	6-1-1997	p. 408-443	14-1-2002	Chiam Chin Kooi & Seow Siew Peng
12.		1	A	11	3	Bundle 14(a), p. 2120-2148	6-1-1997	Not built		NA

Annexure A — The Four Blocks

No.	Title Details	SPA between Cherating and Stadco		Unit Details				SPA between Woolley and Third Party Purchaser		Unit Details				Details of Third Party Purchaser
		Page Reference	Date	Phase No.	Block No.	Unit No.	Level	Page Reference	Date	Phase No.	Block No.	Unit No.	Level	
13.	Geran No. 4502, PT Lot 786, Seksyen 2, Bandar Butterworth, Daerah Seberang Perai Utara, Negeri Pulau Pinang	Bundle B14(b), p.2493-2521	6-1-1997	1	D	42	G	Bundle B2, p.444-483	28-6-2002	1	C	1	G	Khoo Beng Tian & Hew Tat Ean
14.		Bundle B14(b), p.2522-2550	6-1-1997	1	D	42	1	Bundle B2, p.484-523	28-6-2002	1	C	1	1	
15.		Bundle B14(b), p.2551-2579	6-1-1997	1	D	42	2	Bundle B2, p.524-559	11-7-2003	1	C	1	2	Tan Kay Lean & Khiang Sek Yin
16.		Bundle B14(b), p.2580-2608	6-1-1997	1	D	42	3	Not built						NA

I H G F E D C B A

Annexure B – Blocks with Facades Completed

Phase No.	Block No.	Unit No.	Particulars of sub-divided title
2	B	15	Geran 103238 [H.S.(D) 22198], No. PT Lot 2813, Seksyen 2, Bandar Butterworth, Daerah Seberang Perai Utara, Negeri Pulau Pinang
2	B	16	Geran 103239 [H.S.(D) 22199], No. PT Lot 2814, Seksyen 2, Bandar Butterworth, Daerah Seberang Perai Utara, Negeri Pulau Pinang
2	I	100	Geran 108862 [H.S.(D) 22496], No. PT Lot 5564, Seksyen 3, Bandar Butterworth, Daerah Seberang Perai Utara, Negeri Pulau Pinang
2	I	101	Geran 108863 [H.S.(D) 22497], No. PT Lot 5565, Seksyen 3, Bandar Butterworth, Daerah Seberang Perai Utara, Negeri Pulau Pinang

Annexure C – Unbuilt Shop Offices

Phase No.	Block No.	Unit No.	Particulars of sub-divided title
1	C	33	H.S.(D) 22068, No. PT Lot 2683, Seksyen 2, Bandar Butterworth, Daerah Seberang Perai Utara, Negeri Pulau Pinang
1	C	33A	H.S.(D) 22069, No. PT Lot 2684, Seksyen 2, Bandar Butterworth, Daerah Seberang Perai Utara, Negeri Pulau Pinang
1	C	41	H.S.(D) 22114, No. PT Lot 2729, Seksyen 2, Bandar Butterworth, Daerah Seberang Perai Utara, Negeri Pulau Pinang and H.S.(D) 22125, No. PT Lot 2740, Seksyen 2, Bandar Butterworth, Daerah Seberang Perai Utara, Negeri Pulau Pinang
1	G	75	H.S.(D) 22318, No. PT Lot 5386, Seksyen 3, Bandar Butterworth, Daerah Seberang Perai Utara, Negeri Pulau Pinang
1A	E	33	Geran 108901 [H.S.(D) 22535], No. PT Lot 5603, Seksyen 3, Bandar Butterworth, Daerah Seberang Perai Utara, Negeri Pulau Pinang

1A	E	33A	Geran 108902 [H.S.(D) 22536], No. PT Lot 5604, Seksyen 3, Bandar Butterworth, Daerah Seberang Perai Utara, Negeri Pulau Pinang
1A	E	35	Geran 108903 [H.S.(D) 22537], No. PT Lot 5605, Seksyen 3, Bandar Butterworth, Daerah Seberang Perai Utara, Negeri Pulau Pinang
1A	E	36	Geran 108904 [H.S.(D) 22538], No. PT Lot 5606, Seksyen 3, Bandar Butterworth, Daerah Seberang Perai Utara, Negeri Pulau Pinang
1A	E	37	Geran 108905 [H.S.(D) 22539], No. PT Lot 5607, Seksyen 3, Bandar Butterworth, Daerah Seberang Perai Utara, Negeri Pulau Pinang
1A	G	45	Geran 108908 [H.S.(D) 22542] , No. PT Lot 5610, Seksyen 3, Bandar Butterworth, Daerah Seberang Perai Utara, Negeri Pulau Pinang and Geran 108926 [H.S.(D) 22561], No. PT Lot 5629,Seksyen 3, Bandar Butterworth, Daerah Seberang Perai Utara, Negeri Pulau Pinang
1A	G	46	Geran 108927 [H.S.(D) 22562], No. PT Lot 5630, Seksyen 3, Bandar Butterworth, Daerah Seberang Perai Utara, Negeri Pulau Pinang
1A	M	93	Geran 108983 [H.S.(D) 22452], No. PT Lot 5520, Seksyen 3, Bandar Butterworth, Daerah Seberang Perai Utara, Negeri Pulau Pinang
1A	M	93A	Geran 108984 [H.S.(D) 22453], No. PT Lot 5521, Seksyen 3, Bandar Butterworth, Daerah Seberang Perai Utara, Negeri Pulau Pinang
1A	M	95	Geran 108985 [H.S.(D) 22454], No. PT Lot 5522, Seksyen 3, Bandar Butterworth, Daerah Seberang Perai Utara, Negeri Pulau Pinang
1A	M	96	Geran 108986 [H.S.(D) 22455], No. PT Lot 5523, Seksyen 3, Bandar Butterworth, Daerah Seberang Perai Utara, Negeri Pulau Pinang

1A	M	97	Geran 108987 [H.S.(D) 22456], No. PT Lot 5524, Seksyen 3, Bandar Butterworth, Daerah Seberang Perai Utara, Negeri Pulau Pinang and Geran 108991 [H.S.(D) 22576], No. PT Lot 5644, Seksyen 3, Bandar Butterworth, Daerah Seberang Perai Utara, Negeri Pulau Pinang
1A	M	98	Geran 108988 [H.S.(D) 22457], No. PT Lot 5525, Seksyen 3, Bandar Butterworth, Daerah Seberang Perai Utara, Negeri Pulau Pinang and Geran 108992 [H.S.(D) 22577], No. PT Lot 5645, Seksyen 3, Bandar Butterworth, Daerah Seberang Perai Utara, Negeri Pulau Pinang
2	D	33	Geran 103223 [H.S.(D) 22183], No. PT Lot 2798, Seksyen 2, Bandar Butterworth, Daerah Seberang Perai Utara, Negeri Pulau Pinang
2	D	33A	Geran 103222 [H.S.(D) 22182], No. PT Lot 2797, Seksyen 2, Bandar Butterworth, Daerah Seberang Perai Utara, Negeri Pulau Pinang
2	D	35	Geran 103221 [H.S.(D) 22181], No. PT Lot 2796, Seksyen 2, Bandar Butterworth, Daerah Seberang Perai Utara, Negeri Pulau Pinang
2	D	36	Geran 103220 [H.S.(D) 22180], No. PT Lot 2795, Seksyen 2, Bandar Butterworth, Daerah Seberang Perai Utara, Negeri Pulau Pinang
2	L	126	Geran 108845 [H.S.(D) 22479], No. PT Lot 5547, Seksyen 3, Bandar Butterworth, Daerah Seberang Perai Utara, Negeri Pulau Pinang
2	L	127	Geran 108846 [H.S.(D) 22480], No. PT Lot 5548, Seksyen 3, Bandar Butterworth, Daerah Seberang Perai Utara, Negeri Pulau Pinang
2	L	128	Geran 108847 [H.S.(D) 22481], No. PT Lot 5549, Seksyen 3, Bandar Butterworth, Daerah Seberang Perai Utara, Negeri Pulau Pinang
2	L	129	Geran 108848 [H.S.(D) 22482], No. PT Lot 5550, Seksyen 3, Bandar Butterworth, Daerah Seberang Perai Utara, Negeri Pulau Pinang

2	L	130	Geran 108849 [H.S.(D) 22483], No. PT Lot 5551, Seksyen 3, Bandar Butterworth, Daerah Seberang Perai Utara, Negeri Pulau Pinang
4	B	15	Geran 109089 [H.S.(D) 22086], No. PT Lot 2701, Seksyen 2, Bandar Butterworth, Daerah Seberang Perai Utara, Negeri Pulau Pinang
4	B	16	Geran 109090 [H.S.(D) 22087], No. PT Lot 2702, Seksyen 2, Bandar Butterworth, Daerah Seberang Perai Utara, Negeri Pulau Pinang
4	B	17	Geran 109091 [H.S.(D) 22088], No. PT Lot 2703, Seksyen 2, Bandar Butterworth, Daerah Seberang Perai Utara, Negeri Pulau Pinang
4	B	18	Geran 109092 [H.S.(D) 22089], No. PT Lot 2704, Seksyen 2, Bandar Butterworth, Daerah Seberang Perai Utara, Negeri Pulau Pinang
4	B	19	Geran 109093 [H.S.(D) 22090], No. PT Lot 2705, Seksyen 2, Bandar Butterworth, Daerah Seberang Perai Utara, Negeri Pulau Pinang
4	B	20	Geran 109094 [H.S.(D) 22091], No. PT Lot 2706, Seksyen 2, Bandar Butterworth, Daerah Seberang Perai Utara, Negeri Pulau Pinang
4	B	21	Geran 109095 [H.S.(D) 22092], No. PT Lot 2707, Seksyen 2, Bandar Butterworth, Daerah Seberang Perai Utara, Negeri Pulau Pinang
4	B	22	Geran 109096 [H.S.(D) 22093], No. PT Lot 2708, Seksyen 2, Bandar Butterworth, Daerah Seberang Perai Utara, Negeri Pulau Pinang
4	J	119	Geran 109373 [H.S.(D) 22253], No. PT Lot 5320, Seksyen 3, Bandar Butterworth, Daerah Seberang Perai Utara, Negeri Pulau Pinang
4	J	120	Geran 109374 [H.S.(D) 22254], No. PT Lot 5321, Seksyen 3, Bandar Butterworth, Daerah Seberang Perai Utara, Negeri Pulau Pinang

4	J	121	Geran 109375 [H.S.(D) 22255], No. PT Lot 5322, Seksyen 3, Bandar Butterworth, Daerah Seberang Perai Utara, Negeri Pulau Pinang
4	J	122	Geran 109376 [H.S.(D) 22256], No. PT Lot 5323, Seksyen 3, Bandar Butterworth, Daerah Seberang Perai Utara, Negeri Pulau Pinang
4	J	123	Geran 109377 [H.S.(D) 22257], No. PT Lot 5324, Seksyen 3, Bandar Butterworth, Daerah Seberang Perai Utara, Negeri Pulau Pinang
4	J	123A	Geran 109378 [H.S.(D) 22258], No. PT Lot 5325, Seksyen 3, Bandar Butterworth, Daerah Seberang Perai Utara, Negeri Pulau Pinang

Endnotes:

1. *Woolley Development Sdn Bhd v. Stadco Sdn Bhd (No 2)* [2010] 7 CLJ 83.
2. [1979] 1 LNS 119; [1979] 2 MLJ 229.
3. 15th edn, at p. 1689.
4. These letters are contained in bundle B6 pp. 1026, 1039 and 1040 and bundle C1 pp. 1 and 3.
5. *Woolley Development Sdn Bhd v. Stadco Sdn Bhd* [2010] 7 CLJ 73.
6. [1994] 4 CLJ 331.
7. [1971] 1 LNS 96; [1971] 1 MLJ 224.
8. LR 61 IA 115.
9. [2010] 1 CLJ 381.
10. See para. 4(ix) (mistakenly numbered as (viii)) and para. 5(ix) of Woolley's re-amended statement of defence.
11. AIR 1972 Bom 100.
12. AIR (58) 1971 Allahabad 189.
13. *op. cit.* at para. 2, 191 left column.
14. [1988] 1 LNS 109; [1988] 3 MLJ 346.
15. [1998] 1 CLJ 793; [1998] 1 MLJ 465.
16. *op. cit.* at 511E.
17. AIR 1932 PC 228.
18. [1995] 3 CLJ 639.
19. *op. cit.* at 679g.
20. [2008] 2 CLJ 303.
21. [2008] 6 CLJ 31.
22. [1957] 2 WLR 123.
23. [1977] Ch 106.

24. op. cit., at 290A-D.
25. [1993] 1 WLR 138.
26. [2009] EWCA Civ 1164.
27. See pp. 48-49 of 64 of the notes of evidence for 18 December 2014.
28. See para. 55 *ante* for a discussion on the effect of a caveat and on the effect of notice to a solicitor.
29. [1994] 2 AC 310.
30. op. cit., footnote 23.
31. Quoted at para. 72, *ante*.
32. (Civil Suit No. 22-224-2002).
33. [2012] 3 CLJ 741.
34. (Civil Suit No. S22-1207-2006).
35. per RK Nathan J in *Simmah Timber Industries Sdn Bhd v. David Low See Keat & 2 Ors* [1999] 1 LNS 14; [1999] 5 MLJ 421.
36. per Gopal Sri Ram JCA in *Aik Ming (M) Sdn Bhd & 2 Ors v. Chang Ching Chuen & Ors & Another Case* [1995] 3 CLJ 639 at p. 658.
37. [1999] 1 All ER 400.
38. *Zaharah A Kadir v. Ramunia Bauxite Pte Ltd & Anor* [2011] 1 LNS 1015; [2012] 1 MLJ 192.
39. Being three years from the date of the land transfer agreement.
40. See *Trans Elite Equipment Rental Sdn Bhd v. PSC-Naval Dockyard Sdn Bhd* [2003] 4 CLJ 270; [2003] 4 MLJ 30 as authority for the position that judgment debt includes pre-judgment interest.